

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHARLES GUERIN,

Plaintiff,

-v-

SAM VISSER MAKEUP, INC.,

Defendant.

20 Civ. 2736 (PAE) (SN)

ORDER

PAUL A. ENGELMAYER, District Judge:


On April 1, 2020, plaintiff Charles Guerin filed the complaint. Dkt. 1. On April 3, 2020, the Court referred this case to the Hon. Sarah Netburn, Magistrate Judge. Dkt. 4. On June 30, 2020, service was due, but Guerin had not filed proof of service on the docket of the case. On July 14, 2020, Judge Netburn issued an order instructing Guerin to file such proof no later than July 17, 2020. Dkt. 5. On July 17, 2020, Guerin’s counsel Richard Liebowitz, Esq., filed a letter, stating that he had not served the defendant “[d]ue to an administrative oversight,” and asking for an extension until August 14, 2020 to serve the defendant. Dkt. 6.

Federal Rule of Civil Procedure 4(m) provides that “[i]f a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order service be made within a specified time,” unless plaintiff shows good cause for the failure. Fed. R. Civ. P. 4(m). Over 90 days have passed since the filing of the complaint, and Liebowitz’s explanation of an administrative oversight—offered only in response to Judge Netburn’s prompting—does not constitute good cause. Further, the Court notes that proceedings before other courts have raised substantial questions as to Liebowitz’s credibility. *See, e.g.*, Dkt. 6 (attaching *Usherson v.*

Bandshell Artist Mgmt., No. 19 Civ. 6368 (JMF), Dkt. 68 (S.D.N.Y. June 26, 2020) (sanctioning Liebowitz and referring him to Grievance Committee for repeated violations of court orders, lies to the court (including under oath), and false allegations in complaint)); *id.*, Appendix (cataloguing Liebowitz's misconduct before other courts); *see also Craig v. PopMatters Media, Inc.*, No. 18 Civ. 1713 (SMY), Dkt. 23 (S.D. Ill. June 14, 2020) (letter from a Liebowitz client, proffering that Liebowitz filed lawsuits on the client's behalf without his knowledge or consent).

Because Guerin and his counsel have offered no good cause for the lack of service, the Court dismisses the complaint, without prejudice. The Clerk of Court is respectfully directed to close this case.

SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge

Dated: July 28, 2020
New York, New York